



State of California—Health and Human Services Agency
Department of Health Services



ARNOLD SCHWARZENEGGER
Governor

February 5, 2007

TO: Prospective Applicants
SUBJECT: Request for Applications (RFA) 07-100
REFERENCE: Contract 07-100 Provisions

The contract provisions in the RFA 07-100 Supplemental Materials are for example purposes only. All provisions may or may not appear in the resulting agreement. As an example: State colleges and universities will have provisions that are different than a not-for-profit organization.

GRANT AGREEMENT

HAS 1229 (Rev. 5/06)

AGREEMENT NUMBER

AMENDMENT NUMBER

REGISTRATION NUMBER:

1. The California Department of Health Services, hereafter called the State, CDHS, and/or DHS hereby makes a grant award of funds to the Grantee named below:

Grantee's Name

2. Grant term
From 07/01/07 through 06/30/10
3. Total grant amount
\$

4. Grantee's Project Director

Name

Telephone number

()

Address, if different from Grantee's address

5. Grantee's Financial Officer

Name

Telephone number

()

Address, if different from Grantee's address

6. The grantee, in accepting this grant award, agrees to comply with the terms and conditions of the following exhibits which are made a part of this grant award by this reference and any applicable statutes or regulations:

Exhibit A – Scope of Work	X pages
Exhibit B – Budget Detail and Payment Provisions	X pages
Exhibit B, Attachment I – Budget (Year 1)	1 page
Exhibit B, Attachment II – Budget (Year 2)	1 page
Exhibit B, Attachment III – Budget (Year 3)	1 page
* Exhibit C – General Terms and Conditions	<u>GTC 306</u>
Exhibit D(S) – Special Terms and Conditions	18 pages
Exhibit E – Additional Provisions	5 pages
Exhibit F – Contractor's Release	1 page
Exhibit G – Travel Reimbursement Information	2 pages
Exhibit H – Contractor Equipment Purchased with CDHS Funds	2 pages
Exhibit I – Inventory/Disposition of CDHS – Funded Equipment	2 pages

See Exhibit E, Provision 1 for additional incorporated exhibits.

* Item marked with an Asterisk (*) is incorporated herein as if attached. View at: <http://www.ols.dgs.ca.gov/Standard+Language>.

In Witness Whereof, this agreement has been executed by the parties hereto.

GRANTEE

Grantee's Name (If other than an individual, state if a corporation, partnership, nonprofit organization, etc.)

Signed By (Authorized Signature)

Date Signed



Printed Name and Title of Person Signing that has delegated authority to bind the Grantee

Mailing Address

STATE OF CALIFORNIA

Agency Name

California Department of Health Services

Signed By (Authorized Signature)

Date Signed



Printed or Stamped Name and Title of Person Signing or their Designee

Allan Chinn, Chief, Contracts and Purchasing Services Section

Address

1501 Capitol Avenue, Suite 71.2101, MS 1403, P.O. Box 997413, Sacramento, CA 95899-7413

☐ Exempt from DGS review per AG Opinions

☒ Exempt from DGS review per this authority:
H&S Code 104385

Exhibit A
Scope of Work

1. Service Overview

Grantee agrees to provide to the Department of Health Services (DHS) the services described herein:

In accordance with Health & Safety Code Section 104385, the Grantee will conduct tobacco control health education and prevention activities targeted to high-risk persons and groups to reduce the number of persons beginning to use tobacco, continuing to use tobacco or developing tobacco-related diseases.

2. Service Location

The services shall be performed at facilities accessible to Grantee.

3. Service Hours

The services shall be provided during normal working hours, Monday through Friday, excluding national holidays. Grantees employees are expected to complete a 40-hour work week, excluding national holidays, for reimbursement of full-time salary.

4. Project Representatives

A. The project representatives during the term of this agreement will be:

Department of Health Services

[Enter Name of CDHS Contract Manager]

Telephone: (XXX) XXX-XXXX

Fax: (916) 449-5505

E-mail: XXXXXXXX@dhs.ca.gov

Grantee

[Enter Name of Grantee's Contract Manager]

Telephone: (XXX) XXX-XXXX

Fax: (XXX) XXX-XXXX

E-mail: XXXXXXXX@xxxxxxxx

B. Direct all inquiries to:

Department of Health Services

Tobacco Control Section

Attention: [Enter name]

Mail Station Code 7206

P.O. Box Number 997413

Sacramento, CA, 95899-7413

Telephone: (XXX) XXX-XXXX

Fax: (916) 449-5505

E-mail: XXXXXXXX@dhs.ca.gov

Grantee

Section or Unit Name (if applicable)

Attention: [Enter name, if applicable]

Street address & room number, if applicable

P.O. Box Number (if applicable)

City, State, Zip Code

Telephone: (XXX) XXX-XXXX

Fax: (XXX) XXX-XXXX

E-mail: XXXXXX@XXXXXX

C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this agreement.

5. Allowable Informal Scope of Work Changes

A. The Grantee or the State may propose informal changes or revisions to the activities, tasks, deliverables and/or performance time frames specified in the Scope of Work,

Exhibit A
Scope of Work

provided such changes do not alter the overall goals and basic purpose of the agreement.

- B. Informal SOW changes may include the substitution of specified activities or tasks; the alteration or substitution of agreement deliverables and modifications to anticipated completion/target dates.
- C. Informal SOW changes processed hereunder, shall not require a formal agreement amendment, provided the Grantee's annual budget does not increase or decrease as a result of the informal SOW change.
- D. Unless otherwise stipulated in this agreement, all informal SOW changes and revisions are subject to prior written approval by the State.
- E. In implementing this provision, CDHS may provide a format for the Grantee's use to request informal SOW changes.

6. Scope of Work/Control of Project

- A. The Grantee shall provide the specific services, deliverables, and objectives as specified in the approved SOW, and any subsequent revisions.
- B. CDHS shall at all times maintain control and direction over the SOW being performed pursuant to this Agreement. CDHS reserves the exclusive right to approve and adjust specific tasks to be performed within the SOW to be performed by the Grantee. These changes shall be accomplished by written notification to the Grantee or amendment to this Agreement. Amendment to this Agreement shall be mutually agreeable to both parties.

7. Subcontract Requirements

The provisions of paragraph 4, Subcontract Requirements, of Exhibit D(S), "Special Terms and Conditions," are supplemented by the following paragraphs.

- A. As used in this Agreement, the term "subcontractor" means any individual or entity that enters into any subcontract with the Grantee for performance of any part of this Agreement.
- B. Grantee shall enter into any subcontract authorized by CDHS within ten (10) days of the date of CDHS' written authorization.
- C. Upon expiration or termination of any subcontract agreement CDHS shall be notified immediately.

8. Progress Reports and Evaluation Instruments and Other Contractual Requirements

This paragraph supercedes provision 15 in the Special Terms and Conditions, Exhibit D(S).

- A. The Grantee shall submit progress reports postmarked no later than the due dates specified in Paragraph B below. Facsimile reports are not acceptable. Failure to submit timely and acceptable reports is cause for invoice payments

Exhibit A
Scope of Work

to the Grantee to be delayed or disallowed. The Grantee's last monthly and/or final invoice will not be processed until an acceptable Final Comprehensive Report has been received and approved by CDHS.

- B. The Grantee shall submit Progress Reports, which describe accomplishments during the report period, to CDHS at the address specified in Exhibit A, Provision 4, in a form and format prescribed by CDHS and in accordance with the following schedule:

	FROM	TO	DUE DATE
1) First Report	07/01/07	12/31/07	01/31/08
2) Second Report	01/01/08	06/30/08	07/31/08
3) Third Report	07/01/08	12/31/08	01/30/09
4) Fourth Report	01/01/09	06/30/09	07/31/09
5) Fifth Report	07/01/09	12/31/09	01/29/10
6) Sixth and Final Comprehensive Report	07/01/07	06/30/10	06/30/10

- C. Reports are to be prepared in accordance with the instructions and format identified in the TCS Competitive Grantees Administrative and Policy Manual.
- D. The Grantee shall complete State evaluation instruments, needs assessment instruments, and other evaluation requirements in accordance with a form and format prescribed by CDHS.
- E. The Grantee shall coordinate and collaborate with TCS or its designee to maximize the tobacco education media/communication efforts, as directed by CDHS.
- F. The Grantee shall comply with all State-issued program and policy letters which may be issued during the Agreement term provided that CDHS shall only make changes or impose additional requirements which will not result in additional costs to the Grantee.

9. Project Monitoring

- A. CDHS and all authorized State control agencies shall have access to all internal and external reports, records, and documents used by the Grantee in the operation and administration of this Agreement. CDHS shall have the right to monitor all aspects of the Grantee's performance regardless of whether there are specific performance requirements in the Agreement pertaining to the area being monitored.

Exhibit A
Scope of Work

- B. The Grantee shall cooperate, and require its subcontractors to cooperate, with CDHS or its designee by participating in meetings and/or site visits as CDHS may deem necessary to monitor Grantee compliance with the agreement.
- 10.** See the following pages for a detailed description of the services to be performed.

Grantees Name
Contract #

Exhibit A
Scope of Work

SPECIFIC SCOPES OF WORK START ON THIS PAGE AND CONTINUE THROUGH THE END OF 6/30/10

Exhibit B
Budget Detail and Payment Provisions

1. Invoicing and Payment

- A. For services satisfactorily rendered, and upon receipt and approval of the invoices, the State agrees to compensate the Grantee for actual expenditures incurred in accordance with the budget(s) attached hereto.
- B. Invoices shall include the Agreement Number and shall be submitted in duplicate not more frequently than monthly in arrears to:

[Name of TCS Contract Manager]
Department of Health Services
Tobacco Control Section
MS 7206
P.O. Box 997413
Sacramento, CA 95899-7413

- C. Invoices shall:
 - 1) Be prepared on Grantee letterhead. If invoices are not on produced letterhead invoices must be signed by an authorized official, employee or agent certifying that the expenditures claimed represent actual expenses for the service performed under this contract.
 - 2) Bear the Grantee's name as shown on the agreement.
 - 3) Identify the billing and/or performance period covered by the invoice.
 - 4) Itemize costs for the billing period in the same or greater level of detail as indicated in this agreement. Subject to the terms of this agreement, reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by DHS.

2. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Agreement and Grantee shall not be obligated to fulfill any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Grantee to reflect the reduced amount.

3. Prompt Payment Clause

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with Section 927.

Exhibit B
Budget Detail and Payment Provisions

4. Amounts Payable

- A. The amounts payable under this agreement shall not exceed:
 - 1) \$XXX,XXX for the budget period of 07/01/07 through 06/30/08.
 - 2) \$XXX,XXX for the budget period of 07/01/08 through 06/30/09.
 - 3) \$XXX,XXX for the budget period of 07/01/09 through 06/30/10.
- B. Payment allocations shall be made for allowable expenses up to the amount annually encumbered commensurate with the state fiscal year in which services are fulfilled and/or goods are received.
- C. Agreement funds from fiscal year 2002-03 and beyond are available for encumbrance and expenditure for three years beyond the date of appropriation, pursuant to Health & Safety Code Section 104466.

5. Timely Submission of Final Invoice

- A. A final undisputed invoice shall be submitted for payment no more than ninety (90) calendar days following the expiration or termination date of this agreement, unless a later or alternate deadline is agreed to in writing by the program contract manager. Said invoice should be clearly marked "Final Invoice", thus indicating that all payment obligations of the State under this agreement have ceased and that no further payments are due or outstanding.
- B. CDHS/TCS may, at its discretion, choose not to honor any delinquent final invoice if the Grantee fails to obtain prior written CDHS/TCS approval of an alternate final invoice submission deadline. Written CDHS/TCS approval shall be sought from the program contract manager prior to the expiration or termination date of this agreement.
- C. The Grantee is hereby advised of its obligation to submit, with the final invoice, a "**Contractor's Release (Exhibit F)**" acknowledging submission of the final invoice to the State and certifying the approximate percentage amount, if any, of recycled products used in performance of this agreement.

6. Allowable Line Item Shifts

- A. Cumulative line item shifts of up to \$10,000 per line item may be made, provided no line item is increased or decreased by more than \$10,000 and the annual agreement total is not changed.
- B. Line item shifts meeting this criteria shall not require a formal agreement amendment.
- C. Grantee shall adhere to State requirements regarding the process to follow in requesting approval to make line item shifts.
- D. Line item shifts may be proposed/requested by either the State or the Grantee.

Exhibit B
Budget Detail and Payment Provisions

7. Expense Allowability / Fiscal Documentation

- A. Invoices, received from a Grantee and accepted and/or submitted for payment by the State, shall not be deemed evidence of allowable agreement costs.
- B. Grantee shall maintain for review and audit and supply to DHS upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.
- C. If the allowability or appropriateness of an expense cannot be determined by the State because invoice detail, fiscal records, or backup documentation is nonexistent or inadequate according to generally accepted accounting principles or practices, all questionable costs may be disallowed and payment may be withheld by the State. Upon receipt of adequate documentation supporting a disallowed or questionable expense, reimbursement may resume for the amount substantiated and deemed allowable.
- D. If travel is a reimbursable expense, receipts must be maintained to support the claimed expenditures. For more information on allowable travel and per diem expenses and required documentation, see Exhibit G entitled, "Travel Reimbursement Information" and the Tobacco Control Section Competitive Grantees Administrative & Policy Manual, Section I, Chapter 400, Travel Information.
- E. Costs and/or expenses deemed unallowable are subject to recovery by DHS. See provision 8 in this exhibit entitled, "Recovery of Overpayments" for more information.

8. Recovery of Overpayments

- A. Grantee agrees that claims based upon a contractual agreement or an audit finding and/or an audit finding that is appealed and upheld, will be recovered by the State and/or Federal Government by one of the following options:
 - 1) Grantee's remittance to the State of the full amount of the audit exception within 30 days following the State's request for repayment;
 - 2) A repayment schedule which is agreeable to both the State and the Grantee.
- B. The State reserves the right to select which option will be employed and the Grantee will be notified by the State in writing of the claim procedure to be utilized.
- C. Interest on the unpaid balance of the audit finding or debt will accrue at a rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the Grantee, beginning 30 days after Grantee's receipt of the State's demand for repayment.
- D. If the Grantee has filed a valid appeal regarding the report of audit findings, recovery of the overpayments will be deferred until a final administrative decision on the appeal has been reached. If the Contractor loses the final administrative appeal,

Exhibit B

Budget Detail and Payment Provisions

Grantee shall repay, to the State, the over-claimed or disallowed expenses, plus accrued interest. Interest accrues from the Grantee's first receipt of State's notice requesting reimbursement of questioned audit costs or disallowed expenses.

9. Overtime

Overtime is not reimbursable under the terms of this Agreement unless the Grantee has budgeted for overtime expenses in any of the approved budget exhibit attachments.

10. Payment for Performance of Deliverables

The Grantee understands and agrees that all deliverables as specified in this Agreement must be fully and satisfactorily performed in order to receive the maximum amount payable identified in Paragraph 4.A., above. The Grantee agrees that if CDHS determines that any deliverable is not performed, only partially performed, or not performed at a level of quality/satisfaction to CDHS, CDHS may reduce the maximum amount payable under this Agreement as follows:

A. Where a deliverable is not performed:

CDHS shall calculate the pro rata share of the non-performed deliverable by utilizing the relative values specified in the Scope of Work for each deliverable and reduce the maximum amount payable by deducting the relative value of the deliverable from any sum due the Grantee to the degree that the sum due the Grantee meets or exceeds the reduction. If the reduction exceeds the sum due the Grantee, the Grantee shall pay such amount back to CDHS upon its demand. The Grantee agrees that such deductions to sums due to the Grantee are offsets and no further amount shall be due to the Grantee.

B. Where a deliverable is only partially performed:

CDHS shall ascertain what percentage of the deliverable was only partially performed, calculate the pro rata share of the partially performed portion by utilizing the relative values specified in the Scope of Work for each deliverable and reduce the maximum amount payable by deducting the relative value of the partially performed deliverable from any sum due the Grantee to the degree that the sum due the Grantee meets or exceeds the reduction. If the reduction exceeds the sum due the Grantee, the Grantee shall pay such amount back to CDHS upon demand. The Grantee agrees that such deductions to sums due to the Grantee are offsets and no further amount shall be due to the Grantee.

C. Where a deliverable is not performed at a level of quality/satisfaction:

CDHS shall ascertain what percentage of the deliverable was not performed at a level of quality/satisfaction, calculate the pro rata share of that portion by utilizing the relative values specified in the Scope of Work for each deliverable and reduce the maximum amount payable by deducting the relative value of that portion from any sum due the Grantee to the degree that the sum due the Grantee meets or exceeds the reduction. If the reduction exceeds the sum due the Grantee, the Grantee shall pay such amount back to CDHS upon demand. The Grantee agrees

Exhibit B
Budget Detail and Payment Provisions

that such deductions to sums due to the Grantee are offsets and no further amount shall be due to the Grantee.

11. Restriction of Funds

Grantee shall not divert, freeze, restrict, or prevent the use of funds received or generated, in whole or in part, for purposes other than conducting the activities described in the approved Scope of Work.

12. Allowable Changes to the Budget Justification

- A. Grantee may request adjustment to the budget justification provided said adjustment do not result in an increase or decrease to any budget exhibit attachment appearing in the Agreement budget for any year.
 - 1) Said adjustments shall not require an Agreement amendment.
 - 2) Said adjustments require prior written approval from CDHS in accordance with a form and format prescribed by CDHS.
- B. Grantee shall adhere to any CDHS requirements regarding the process to follow in requesting approval to make adjustments to the budget justification.
- C. If any adjustments to the budget justification alter performance of the Scope of Work or result in an increase or decrease to any budget exhibit attachment, Grantee must obtain prior written approval from CDHS. Failure to provide CDHS with timely notification of changes which affect the Scope of Work or line item totals in any budget exhibit attachment could result in a disallowance of expenditures and/or an audit exception.
- D. Grantee may not make expenditures in advance of receiving written authorization for any requested changes to the budget justification. Unauthorized expenditures may be denied by CDHS. Changes to the budget justification will not be allowed or approved after the expiration or termination of the Agreement.

13. Grant Generated Revenues

- A. The Grantee shall obtain CDHS' prior approval to generate revenue and place any revenue generated by activities conducted under this Agreement, accruing to or received by the Grantee, into an identifiable FDIC-insured, interest-bearing bank account. Revenue generated by the Grantee as a result of this Agreement shall be used only to meet the goals and objectives identified in the Grantee's approved Scope of Work, to defray costs incurred by the program, to measurably expand the program, or to improve the quality of services above the level of services already funded under this Agreement.
- B. The Grantee shall maintain adequate documentation of the receipt and use of such revenues, and shall provide this documentation to CDHS upon request. If funding authority for this program expires, the Grantee agrees to return to CDHS, within ninety (90) days, any unexpended revenue funds, including any interest earned

Exhibit B

Budget Detail and Payment Provisions

remaining in the generated revenue account to the address specified in Exhibit A, Provision 4.

- C. If this Agreement is terminated pursuant to Paragraph 3 of Exhibit E, Additional Provisions, the Grantee agrees to return to CDHS, within thirty (30) days, any unexpended revenue funds, including any interest earned remaining in the generated revenue account to the address specified in Exhibit A, Provision 4. The words "Unexpended Tobacco Control Program Generated Revenue" and the Agreement Number shall be written on the face of the check or warrant that the Grantee has issued to return the unexpended generated revenue.

Grantee Name
XX-XXXXX

Exhibit B, Attachment I
Budget
(Year 1)
(07/01/07 through 06/30/08)

Personnel \$ _____

Fringe Benefits (___% of Personnel) \$ _____

Operating Expenses \$ _____

Equipment \$ _____

Travel \$ _____

Subcontracts

[Project title] - Subcontractor to be determined \$ _____

[Project title] - Subcontractor to be determined \$ _____

[Project title] - Subcontractor to be determined \$ _____

Total Subcontracts \$ _____

Other Costs \$ _____

1. Educational Materials _____

2. Promotional items _____

3. Incentives _____

4. Media _____

5. Sponsorships _____

6. Other agency-defined line item _____

7. Other agency-defined line item _____

8. Other agency-defined line item _____

Indirect Costs (X% of Total Personnel and Fringe Benefits) \$ _____

Total \$ _____

Grantee Name
XX-XXXXX

Exhibit B, Attachment II
Budget
(Year 2)
(07/01/08 through 06/30/09)

Personnel	\$ _____
Fringe Benefits (___% of Personnel)	\$ _____
Operating Expenses	\$ _____
Equipment	\$ _____
Travel	\$ _____
Subcontracts	
[Project title] - Subcontractor to be determined	\$ _____
[Project title] - Subcontractor to be determined	\$ _____
[Project title] - Subcontractor to be determined	\$ _____
Total Subcontracts	\$ _____
Other Costs	\$ _____
1. Educational Materials	_____
2. Promotional items	_____
3. Incentives	_____
4. Media	_____
5. Sponsorships	_____
6. Other agency-defined line item	_____
7. Other agency-defined line item	_____
8. Other agency-defined line item	_____
Indirect Costs (X% of Total Personnel and Fringe Benefits)	\$ _____
Total	\$ _____

Grantee Name
XX-XXXXX

Exhibit B, Attachment III
Budget
(Year 3)
(07/01/09 through 06/30/10)

Personnel \$ _____

Fringe Benefits (___% of Personnel) \$ _____

Operating Expenses \$ _____

Equipment \$ _____

Travel \$ _____

Subcontracts

[Project title] - Subcontractor to be determined \$ _____

[Project title] - Subcontractor to be determined \$ _____

[Project title] - Subcontractor to be determined \$ _____

Total Subcontracts \$ _____

Other Costs \$ _____

1. Educational Materials _____

2. Promotional items _____

3. Incentives _____

4. Media _____

5. Sponsorships _____

6. Other agency-defined line item _____

7. Other agency-defined line item _____

8. Other agency-defined line item _____

Indirect Costs (___% of Total Personnel and Fringe Benefits) \$ _____

Total \$ _____

Special Terms and Conditions

(For State funded subvention, local assistance and direct service contracts and grant agreements)

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or govern the meaning of any specific term or condition. The terms "contract", "Contractor" and "Subcontractor" shall also mean, "grant", "Grantee" and "Subgrantee" respectively.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount, agreement is federally funded, etc.). The provisions herein apply to this agreement unless the provisions are removed by reference on the face of the agreement, the provisions are superseded by an alternate provision appearing elsewhere in the agreement, or the applicable conditions do not exist.

Index of Special Terms and Conditions

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20. Contract Uniformity (Fringe Benefit Allowability)

1. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with contract funds.)

Reimbursement for travel and per diem expenses from the California Department of Health Services (CDHS) under this agreement shall, unless otherwise specified in this agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in CDHS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the agreement, the new rates shall apply upon their effective date and no amendment to this agreement shall be necessary. Exceptions to DPA rates may be approved by CDHS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from CDHS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

2. Procurement Rules

(Applicable to all agreements in which equipment, miscellaneous property, commodities and/or supplies are furnished by CDHS or expenses for said items are reimbursed with state funds.)

a. Equipment definitions

Wherever the term equipment and/or miscellaneous property is used, the following definitions shall apply:

- (1) **Major equipment:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by CDHS or the cost is reimbursed through this agreement. Software and videos are examples of intangible items that meet this definition.
- (2) **Minor equipment:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more that is listed on the CDHS Asset Management Unit's Minor Equipment List and is either furnished by CDHS or the cost is reimbursed through this agreement. Contractors may obtain a copy of the Minor Equipment List by making a request through the CDHS program contract manager.
- (3) **Miscellaneous property:** A specific tangible item with a life expectancy of one (1) year or more that is either furnished by CDHS or the cost is reimbursed through this agreement. Examples include, but are not limited to: furniture (excluding modular furniture), cabinets, typewriters, desktop calculators, portable dictators, non-digital cameras, etc.

- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this agreement. Said procurements are subject to Paragraphs d through h of Provision 2. Paragraph c of Provision 2 shall also apply, if equipment purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.

- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment and services related to such purchases for performance under this agreement.

- (1) Equipment purchases shall not exceed \$50,000 annually.

To secure equipment above the annual maximum limit of \$50,000, the Contractor shall make arrangements through the appropriate CDHS program contract manager, to have all remaining equipment purchased through CDHS' Purchasing Unit. The cost of equipment purchased by or through CDHS shall be deducted from the funds available in this agreement. Contractor shall submit to the CDHS program contract manager a list of equipment specifications for those items that the State must procure. The State may pay the vendor

directly for such arranged equipment purchases and title to the equipment will remain with CDHS. The equipment will be delivered to the Contractor's address, as stated on the face of the agreement, unless the Contractor notifies the CDHS program contract manager, in writing, of an alternate delivery address.

- (2) All equipment purchases are subject to Paragraphs d through h of Provision 2. Paragraph b of Provision 2 shall also apply, if equipment purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses, shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by CDHS, prior written authorization from the appropriate CDHS program contract manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by CDHS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by CDHS (e.g., when CDHS has a need to monitor certain purchases, etc.), CDHS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. CDHS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that CDHS determines to be unnecessary in carrying out performance under this agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. CDHS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 2 by giving the Contractor no less than 30 calendar days written notice.

3. Equipment Ownership / Inventory / Disposition

(Applicable to agreements in which equipment and/or miscellaneous property is furnished by CDHS and/or when said items are purchased or reimbursed with state funds.)

- a. Wherever the term equipment and/or miscellaneous property is used in Provision 3, the definitions in Provision 2, Paragraph a shall apply.

Unless otherwise stipulated in this agreement, all equipment and/or miscellaneous property that are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement shall be considered state equipment and the property of CDHS.

- (1) CDHS requires the reporting, tagging and annual inventorying of all equipment and/or miscellaneous property that is furnished by CDHS or purchased/reimbursed with funds provided through this agreement.

Upon receipt of equipment and/or miscellaneous property, the Contractor shall report the receipt to the CDHS program contract manager. To report the receipt of said items and to receive property tags, the Contractor shall use a form or format designated by CDHS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with CDHS Funds) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager.

- (2) If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or miscellaneous property to the CDHS program contract manager using a form or format designated by CDHS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of CDHS-Funded Equipment) does not accompany this agreement, Contractor shall request a copy from the CDHS program contract manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or miscellaneous property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
- (b) Submit the inventory report to CDHS according to the instructions appearing on the form or issued by the CDHS program contract manager.
- (c) Contact the CDHS program contract manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or miscellaneous property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by CDHS' Asset Management Unit.
- b. Title to state equipment and/or miscellaneous property shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, CDHS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or miscellaneous property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or miscellaneous property.
- (1) In administering this provision, CDHS may require the Contractor and/or Subcontractor to repair or replace, to CDHS' satisfaction, any damaged, lost or stolen state equipment and/or miscellaneous property. In the event of state equipment and/or miscellaneous property theft, Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the CDHS program contract manager.

- e. Unless otherwise stipulated by the program funding this agreement, equipment and/or miscellaneous property purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall only be used for performance of this agreement or another CDHS agreement.
- f. Within sixty (60) calendar days prior to the termination or end of this agreement, the Contractor shall provide a final inventory report of equipment and/or miscellaneous property to the CDHS program contract manager and shall, at that time, query CDHS as to the requirements, including the manner and method, of returning state equipment and/or miscellaneous property to CDHS. Final disposition of equipment and/or miscellaneous property shall be at CDHS expense and according to CDHS instructions. Equipment and/or miscellaneous property disposition instructions shall be issued by CDHS immediately after receipt of the final inventory report. At the termination or conclusion of this agreement, CDHS may at its discretion, authorize the continued use of state equipment and/or miscellaneous property for performance of work under a different CDHS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under this agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, within thirty (30) calendar days prior to the termination or end of this agreement, the Contractor and/or Subcontractor shall return such vehicles to CDHS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to CDHS.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this agreement or any period of contract extension during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by CDHS under the terms of this agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the CDHS program contract manager.

- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this agreement or until such time as the motor vehicle is returned to CDHS.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:
 - [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Services).
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this agreement and any extension or continuation of this agreement.
 - [3] The insurance carrier shall notify the California Department of Health Services, in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to the agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by CDHS, in writing, if this provision is applicable to this agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
- (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, CDHS may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

4. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
 - (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
 - (2) The State may identify the information needed to fulfill this requirement.
 - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - (a) A local governmental entity or the federal government,
 - (b) A State college or university from any State,
 - (c) A Joint Powers Authority,

- (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Entities of any type that will provide subvention aid or direct services to the public,
 - (h) Entities and/or service types identified as exempt from advertising in State Administrative Manual Section 1233 subsection 3. View this publication at the following Internet address: <http://sam.dgs.ca.gov>.
- b. CDHS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this agreement.
- (1) Upon receipt of a written notice from CDHS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by CDHS.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of CDHS. CDHS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by CDHS.
- d. Contractor shall maintain a copy of each subcontract entered into in support of this agreement and shall, upon request by CDHS, make copies available for approval, inspection, or audit.
- e. CDHS assumes no responsibility for the payment of subcontractors used in the performance of the agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this agreement.
- f. The Contractor is responsible for all performance requirements under this agreement even though performance may be carried out through a subcontract.
- g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this agreement.
- h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:
- "(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from CDHS to the Contractor, to permit CDHS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
- i. Unless otherwise stipulated in writing by CDHS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this agreement.
- j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 17.

5. Income Restrictions

Unless otherwise stipulated in this agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this agreement shall be paid by the Contractor to CDHS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by CDHS under this agreement.

6. Audit and Record Retention

(Applicable to agreements over \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures, and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purposes of this provision.
- b. The Contractor's and/or Subcontractor's facility or office or such part thereof as may be engaged in the performance of this agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that CDHS, the Department of General Services, the Bureau of State Audits, or their designated representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this agreement. (GC 8546.7, CCR Title 2, Section 1896).
- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this agreement, or by subparagraphs (1) or (2) below.
 - (1) If this agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this agreement, reduce its accounts, books and records related to this agreement to microfilm, computer disk, CD ROM, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

7. Site Inspection

The State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or Subcontractor, the Contractor shall provide and shall require Subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

8. Intellectual Property Rights

a. Ownership

- (1) Except where CDHS has agreed in a signed writing to accept a license, CDHS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) For the purposes of this agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this agreement. In addition, under this agreement, Contractor may access and utilize certain of CDHS' Intellectual Property in existence prior to the effective date of this agreement. Except as otherwise set forth herein, Contractor shall not use any of CDHS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of CDHS. **Except as otherwise set forth herein, neither the Contractor nor CDHS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this agreement, Contractor accesses any third-party Intellectual Property that is licensed to CDHS, Contractor agrees to abide by all license and confidentiality restrictions applicable to CDHS in the third-party's license agreement.
- (4) Contractor agrees to cooperate with CDHS in establishing or maintaining CDHS' exclusive rights in the Intellectual Property, and in assuring CDHS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this agreement, Contractor shall require the terms of the agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to CDHS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or CDHS and which result directly or indirectly from this agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with CDHS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce CDHS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this agreement. Contractor hereby grants to CDHS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of CDHS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Section a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to CDHS to any work product made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement, shall include CDHS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2006, etc.], California Department of Health Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this agreement, which did not result from research and development specifically included in the agreement's scope of work, Contractor hereby grants to CDHS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the agreement's scope of work, then Contractor agrees to assign to CDHS, without additional compensation, all its right, title and interest in and to such inventions and to assist CDHS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining CDHS' prior written approval; and (ii) granting to or obtaining for CDHS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this agreement. If such a license upon these terms is unattainable, and CDHS determines that the Intellectual Property should be included in or is required for Contractor's performance of this agreement, Contractor shall obtain a license under terms acceptable to CDHS.

f. Warranties

(1) Contractor represents and warrants that:

- (a) It is free to enter into and fully perform this agreement.
- (b) It has secured and will secure all rights and licenses necessary for its performance of this agreement.
- (c) Neither Contractor's performance of this agreement, nor the exercise by either Party of the rights granted in this agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
- (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to CDHS in this agreement.
- (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this agreement.

(2) CDHS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless CDHS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of CDHS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or CDHS and which result directly or indirectly from this agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this agreement. CDHS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against CDHS.
- (2) Should any Intellectual Property licensed by the Contractor to CDHS under this agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve CDHS' right to use the licensed Intellectual Property in accordance with this agreement at no expense to CDHS. CDHS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for CDHS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, CDHS shall be entitled to a refund of all monies paid under this agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate CDHS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges CDHS would suffer irreparable harm in the event of such breach and agrees CDHS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, CDHS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this agreement or any project schedule.

9. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior CDHS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

10. Confidentiality of Information

- a. The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this agreement or persons whose names or identifying information become available or are disclosed to the Contractor, his/her employees, agents, or subcontractors as a result of services performed under this agreement, except for statistical information not identifying any such person.
- b. The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this agreement.
- c. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the CDHS program contract manager all requests for disclosure of such identifying information not emanating from the client or person.
- d. The Contractor shall not disclose, except as otherwise specifically permitted by this agreement or authorized by the client, any such identifying information to anyone other than CDHS without prior written authorization from the CDHS program contract manager, except if disclosure is required by State or Federal law.
- e. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

11. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contract communications) prepared as a requirement of this agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

12. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from CDHS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and CDHS, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the CDHS program contract manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. Should the

Contractor disagree with the Branch Chief's decision, the Contractor may appeal to the second level.

- (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Division 25.1 (commencing with Section 38050) of the Health and Safety Code and the regulations adopted thereunder. (Title 1, Subchapter 2.5, commencing with Section 251, California Code of Regulations.)
- c. Disputes arising out of an audit, examination of an agreement or other action not covered by subdivision (a) of Section 20204, of Chapter 2.1, Title 22, of the California Code of Regulations, and for which no procedures for appeal are provided in statute, regulation or the agreement, shall be handled in accordance with the procedures identified in Sections 51016 through 51047, Title 22, California Code of Regulations.
- d. Unless otherwise stipulated in writing by CDHS, all dispute, grievance and/or appeal correspondence shall be directed to the CDHS program contract manager.
- e. There are organizational differences within CDHS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the CDHS program contract manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

13. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code section 38020). Direct service contracts shall not include contracts, grants, or subventions to other governmental agencies or units of government nor contracts with regional centers or area agencies on aging (See H&S Code section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives \$25,000 or more from any State agency under a direct service contract; the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (2) If the Contractor is a nonprofit organization (as defined in H&S Code section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract, the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this

agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**

- (3) If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards, the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
 - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.
 - (4) If the Contractor submits to CDHS a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the CDHS program funding this agreement. The audit report must identify the Contractor's legal name and the number assigned to this agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the CDHS program contract manager shall forward the audit report to CDHS' Audits and Investigations Unit if the audit report was submitted under Section 13C(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
 - e. The cost of the audits described herein may be included in the funding for this agreement up to the proportionate amount this agreement represents of the Contractor's total revenue. The CDHS program funding this agreement must provide advance written approval of the specific amount allowed for said audit expenses.
 - f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
 - g. Nothing in this agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
 - h. Nothing in this provision limits the authority of the State to make audits of this contract, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
 - i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.

14. Novation Requirements

If the Contractor proposes any novation agreement, CDHS shall act upon the proposal within 60 days after receipt of the written proposal. CDHS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, CDHS will initiate an amendment to this agreement to formally implement the approved proposal.

15. Payment Withholds

(Applicable only if a final report is required by this agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this agreement, CDHS may, at its discretion, withhold 10 percent (10%) of the face amount of the contract, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until CDHS receives a final report that meets the terms, conditions and/or scope of work requirements of this agreement.

16. Performance Evaluation

(Not applicable to grant agreements.)

CDHS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with CDHS. Negative performance evaluations may be considered by CDHS prior to making future contract awards.

17. Officials Not to Benefit

No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this agreement if made with a corporation for its general benefits.

18. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to CDHS or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant. Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

19. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this agreement, hereby acknowledges the applicability of Government Code 16645 through 16649 to this agreement. Furthermore, Grantee, by signing this agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

20. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, CDHS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the agreement.
 - (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.
- f. Earned/Accrued Compensation
 - (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
 - (2) For multiple year contracts, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the agreement. Holidays cannot be carried over from one contract year to the next. See f Provision (3)(b) for an example.
 - (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a contract

period of one year. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of the agreement, the Contractor during a one-year agreement term may only claim up to three weeks of vacation and twelve days of sick leave actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the agreement are not an allowable cost.

(b) Example No. 2:

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) Example No. 3:

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to CDHS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

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1. Additional Incorporated Exhibits

A. The following documents and any subsequent updates are not attached, but are incorporated herein and made a part hereof by this reference. These documents may be updated periodically by DHS, as required by program directives. DHS shall provide the Contractor with copies of said documents and any periodic updates thereto, under separate cover. DHS will maintain on file, all documents referenced herein and any subsequent updates.

- 1) The DHS Health Administrative Manual Section 6-1000.
- 2) The Budget Justification supporting the line item budget.
- 3) The Tobacco Control Section's Competitive Grantees Administrative and Policy Manual.
- 4) The Scope of Work Detail.

2. Amendment Process

Should either party, during the term of this agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the State.

3. Cancellation/Termination

A. Termination for Convenience

DHS retains the option to terminate this Agreement without cause at DHS' convenience, provided that written notice has been delivered to the Grantee at least thirty (30) days prior to such termination date. If DHS terminates this Agreement at its convenience, the Grantee will be entitled to compensation upon submission of an invoice and proper proof of claim, in that proportion which its services and products were satisfactorily rendered or provided and its expenses necessarily incurred pursuant to this Agreement, up to the date when notice of termination is received by the Grantee (hereinafter referred to as "the notice date"). In the event of termination, at the request of DHS, the Grantee shall furnish copies of all proposals, specifications, designs, procedures, layouts, copy, and other materials related to the services or deliverables provided under this Agreement, whether finished or in progress on the termination date. The Grantee will not be entitled to reimbursement for any expenses incurred for services and deliverables pursuant to the Agreement after the notice date, unless the Grantee receives written advance approval from DHS. Any services or deliverables for which the Grantee is paid which are provided according to the procedures in this paragraph shall become the property of DHS.

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B. Immediate Termination for Cause

DHS reserves the right to immediately terminate this Agreement in whole or in part by providing written notice to the Grantee after the occurrence of any of the following:

- 1) If the Grantee knowingly furnishes any statement, representation, warranty, or certification in connection with the Scope of Work of the Agreement, which representation is materially false, deceptive, incorrect, or incomplete;
- 2) If the Grantee fails to perform to DHS' satisfaction any material requirement of the Agreement or defaults in performance of the Agreement;
- 3) If DHS determines satisfactory performance of the Agreement is substantially endangered by the action or inaction by the Grantee, or can reasonably anticipate such occurrence of default;
- 4) If the Grantee files for bankruptcy or, if in the judgment of DHS, the Grantee becomes financially incapable of completing the Agreement; or
- 5) DHS may, at its discretion, require the Grantee to cease performance of certain components of the Scope of Work and complete performance of other components prior to termination of the entire Agreement.

C. Responsibilities Upon Termination

After receipt of notification of termination of this Agreement, and except as otherwise specified by DHS, the Grantee shall stop work under this Agreement on the date specified in the written notice of termination. The Grantee shall:

- 1) Place no further order or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Agreement that is not terminated;
- 2) Assign to DHS, effective on the date of termination, in the manner, and to the extent specified by DHS, all of the rights, titles, and interests for the Grantee under the orders and subcontracts terminated. In the case of said assignment, DHS has the right, at its discretion, to settle or reimburse the Grantee for payment of any or all claims arising out of the termination of such orders and subcontracts and reduce any settlement amount determined by the amount reimbursed to the Grantee for payment of such orders or subcontracts;
- 3) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of DHS to the extent DHS may require. DHS' approval or ratification shall be final for the purposes of this section.

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- 4) Upon the effective date of termination of the Agreement and the payment by DHS of all items properly chargeable to DHS hereunder, Grantee shall transfer, assign, and make available to DHS all property and materials belonging to DHS, all rights and claims to any and all reservations, contracts, and arrangements with owners of media/PR materials, or others, and shall make available to DHS all written information regarding DHS' media/PR materials, and no extra compensation is to be paid to Grantee for its services in connection with any such transfer or assignment;
- 5) Take such action as may be necessary, or as DHS may specify, to protect and preserve any property related to this Agreement which is in the possession of the Grantee and in which DHS has or may acquire an interest.

4. Avoidance of Conflicts of Interest by Contractor

- A. DHS intends to avoid any real or apparent conflict of interest on the part of the Contractor, subcontractors, or employees, officers and directors of the Contractor or subcontractors. Thus, DHS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to DHS review and prior approval.
- B. Conflicts of interest include, but are not limited to:
 - 1) An instance where the Contractor or any of its subcontractors, or any employee, officer, or director of the Contractor or any subcontractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the contract.
 - 2) An instance where the Contractor's or any subcontractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- C. If DHS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by DHS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by DHS and cannot be resolved to the satisfaction of DHS, the conflict will be grounds for terminating the contract. DHS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.

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Additional Provisions

5. Domestic Partners

This provision supersedes and replaces Provision 7 (Domestic Partners) in the Department of General Services' Contractor Certification Clauses incorporated by reference within the General Terms and Conditions (GTC) cited on the face of the agreement. Based upon an existing program exemption from Chapter 2 of Part 2 of Division 2 of the Public Contract Code that applies to this agreement, DHS concludes that this agreement is not subject to the requirements of Public Contract Code Section 10295.3 governing domestic partners.

6. Acknowledgement of State Participation and Helpline Reference

- A. The Grantee shall acknowledge the financial support of State funds whenever any findings, data, and materials developed pursuant to this Agreement are published or whenever the Grantee creates a product (e.g., brochure, a film, videotape, manual, book, pamphlet, training guide, poster, curriculum, etc.) pursuant to this agreement, in the following manner: "This _____ was made possible by funds received from Agreement Number 05-00000 with the California Department of Health Services, Tobacco Control Section."
- B. Informational materials including, but not limited to, brochures, pamphlets, posters, curriculum, training guides, etc., that are developed under this Agreement, shall include the California Smokers Helpline toll-free telephone number unless granted an exemption from such requirement by DHS.

7. Intellectual Property Rights

The provisions of paragraph 8, Intellectual Property Rights, of Exhibit D(S), "Special Terms and Conditions," are supplemented by the following paragraphs.

- A. Grantee shall grant to DHS, as permitted in California Civil Code, Section 982, ownership in any original work of authorship created, provided, or produced under this agreement that is not fixed in any tangible medium of expression.
- B. Subject to the terms, conditions, and limitations contained in this agreement and subject to the performance of all terms and conditions stated in this Agreement, DHS grants to the Grantee a non-exclusive license to use, duplicate, distribute, and permit others to use Works created, produced or developed under this Agreement for the purpose of carrying out the terms and conditions of this Agreement, consistent with any limitations set forth in this Agreement.
- C. If the Grantee enters into any agreement or subcontract with another party in order to perform this Agreement, Grantee shall require the other party to grant DHS ownership in any original work or authorship created, provided, or produced by the subcontractor, Grantee or DHS under this Agreement that is not fixed in any tangible medium of expression, as permitted under California Civil Code Section 982.

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Additional Provisions

- D. During the contracting phase of this process, DHS shall negotiate with the Grantee to determine the number of camera-ready and completed versions of each deliverable DHS will receive. It is anticipated that DHS will use deliverables in future tobacco control programs.

8. Lobbying and Political Activities

- A. The Grantee shall not use Agreement funds for direct or indirect lobbying.
 - 1) Direct lobbying, for the purposes of this Agreement is defined as any explicit attempt to promote a yes or no vote on a specific piece of legislation, local ordinance or ballot measure through any oral, written or other form of communication with any member or employee of a legislative body, or any government official or employee who participates in the formulation of, or decision-making regarding that specific piece of legislation, local ordinance or ballot measure.
 - 2) Indirect lobbying, for the purposes of this Agreement, is defined as any oral or written communication to the general public or any segment of the general population which explicitly attempts to promote a yes or no vote on a specific piece of legislation, local ordinance or ballot measure by encouraging the recipients of the communication to attempt to influence a legislator or an employee of a legislative body or any other government official or employee who participates in the formulation of, or decision-making regarding that legislation, local ordinance or ballot measure.
- B. The Grantee shall not use Agreement funds to promote a yes or no vote on a ballot measure.
- C. The Grantee shall not use Agreement funds to promote, directly or indirectly, any candidate for an elective public office.

9. Confidentiality of Information

The provisions of paragraph 10, Confidentiality of Information, in Exhibit D(S), "Special Terms and Conditions," are supplemented by the following paragraphs.

- A. All financial, statistical, personal, technical, and other data and information relating to DHS operations which are designated confidential by DHS or developed by the Grantee and deemed confidential by DHS, shall be protected by the Grantee from unauthorized use and disclosure. If the methods and procedures employed by the Grantee for the protection of the Grantee's data and information are deemed by DHS to be adequate for the protection of the confidential information, such methods and procedures may be used to carry out the intent of this paragraph. If the methods and procedures employed by the Grantee are deemed by DHS to be inadequate, DHS, in cooperation with the Grantee, will specify the procedures to be followed.
- B. The Grantee and all subcontractors shall immediately notify the Program Contract Manager of any request from a third party for disclosure of any

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information relating to this Agreement, including, but not limited to, subpoena, deposition proceedings, court order or other legal action. Unless the Program Contract Manager authorizes the disclosure of the information in writing, the Grantee and all subcontractors shall use every means, to the maximum extent permitted by law and at no cost to DHS, to protect the information from disclosure.

10. Insurance Requirements

Grantee shall comply with the following insurance requirements:

A. Commercial General Liability

The Grantee must furnish to DHS a certificate of insurance stating that commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined is presently in effect for the Grantee. The commercial general liability insurance policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured agreement. The commercial general liability insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Grantee's limit of liability.

B. The certificate of insurance must be issued by an insurance company acceptable to the Department of General Services (DGS) Office of Risk and Insurance Management or be provided through partial or total self-insurance acceptable to DGS.

C. The certificate of insurance must include the following provisions:

- 1) The insurer will not cancel the insured's coverage without giving 30 days prior written notice to the California Department of Health Services, and
- 2) The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State of California under this agreement.

D. The Grantee agrees that the insurance required herein will remain in effect at all times during the term of the agreement. In the event said insurance coverage expires at any time or times during the term of this agreement, the Grantee agrees to provide, at least 30 calendar days before said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the agreement or for a period of not less than one year. New certificates of insurance are subject to the approval of DGS, and the Grantee agrees that no work or services shall be performed prior to such approval. DHS may, in addition to any other remedies it may have, terminate this agreement on the occurrence of such event.

E. DHS will not be responsible for any premiums, deductibles, or assessments on the insurance policy.

Contractor's Release

Instructions to Contractor:

With final invoice(s) submit one (1) original and one (1) copy. The original must bear the original signature of a person authorized to bind the Contractor. The additional copy may bear photocopied signatures.

Submission of Final Invoice

Pursuant to **contract number** _____ entered into between the State of California Department of Health Services (CDHS) and the Contractor (identified below), the Contractor does acknowledge that final payment has been requested via **invoice number(s)** _____, in the **amount(s) of \$** _____ and **dated** _____.
If necessary, enter "See Attached" in the appropriate blocks and attach a list of invoice numbers, dollar amounts and invoice dates.

Release of all Obligations

By signing this form, and upon receipt of the amount specified in the invoice number(s) referenced above, the Contractor does hereby release and discharge the State, its officers, agents and employees of and from any and all liabilities, obligations, claims, and demands whatsoever arising from the above referenced contract.

Repayments Due to Audit Exceptions / Record Retention

By signing this form, Contractor acknowledges that expenses authorized for reimbursement does not guarantee final allowability of said expenses. Contractor agrees that the amount of any sustained audit exceptions resulting from any subsequent audit made after final payment will be refunded to the State.

All expense and accounting records related to the above referenced contract must be maintained for audit purposes for no less than three years beyond the date of final payment, unless a longer term is stated in said contract.

Recycled Product Use Certification

By signing this form, Contractor certifies under penalty of perjury that a minimum of 0% unless otherwise specified in writing of post consumer material, as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether it meets the requirements of Public Contract Code Section 12209. Contractor specifies that printer or duplication cartridges offered or sold to the State comply with the requirements of Section 12156(e).

Reminder to Return State Equipment/Property (If Applicable)

(Applies only if equipment was provided by CDHS or purchased with or reimbursed by contract funds)

Unless CDHS has approved the continued use and possession of State equipment (as defined in the above referenced contract) for use in connection with another CDHS agreement, Contractor agrees to promptly initiate arrangements to account for and return said equipment to CDHS, at CDHS's expense, if said equipment has not passed its useful life expectancy as defined in the above referenced contract.

Patents / Other Issues

By signing this form, Contractor further agrees, in connection with patent matters and with any claims that are not specifically released as set forth above, that it will comply with all of the provisions contained in the above referenced contract, including, but not limited to, those provisions relating to notification to the State and related to the defense or prosecution of litigation.

ONLY SIGN AND DATE THIS DOCUMENT WHEN ATTACHING TO THE FINAL INVOICE

Contractor's Legal Name (as on contract): _____

Signature of Contractor or Official Designee: _____ Date: _____

Printed Name/Title of Person Signing: _____

CDHS Distribution: Accounting (Original) Program

Travel Reimbursement Information

(Mileage Reimbursement Rate Increase Effective January 1, 2007)

1. The following rate policy is to be applied for reimbursing the travel expenses of persons under contract. The terms "contract" and/or "subcontract" have the same meaning as "grantee" and/or "subgrantee" where applicable.
 - a. Reimbursement for travel and/or per diem shall be at the rates established for nonrepresented/excluded state employees. Exceptions to Department of Personnel Administration (DPA) lodging rates may be approved by CDHS upon the receipt of a statement on/with an invoice indicating that such rates are not available.
 - b. Short Term Travel is defined as a 24-hour period, and less than 31 consecutive days, and is at least 50 miles from the main office, headquarters or primary residence. Starting time is whenever a contract or subcontract employee leaves his or her home or headquarters. "Headquarters" is defined as the place where the contracted personnel spends the largest portion of their working time and returns to upon the completion of assignments. Headquarters may be individually established for each traveler and approved verbally or in writing by the program funding the agreement. Verbal approval shall be followed up in writing or email.
 - c. Contractors on travel status for more than one 24-hour period and less than 31 consecutive days may claim a fractional part of a period of more than 24 hours. Consult the chart appearing on Page 2 of this exhibit to determine the reimbursement allowance. All lodging reimbursement claims must be supported by a receipt*. If a contractor does not or cannot present receipts, lodging expenses will not be reimbursed.

(1) Lodging (with receipts*):

Travel Location / Area	Reimbursement Rate
Statewide (excluding the counties identified below)	\$ 84.00 plus tax
Counties of Los Angeles and San Diego	\$110.00 plus tax
Counties of Alameda, San Francisco, San Mateo, and Santa Clara	\$140.00 plus tax

Reimbursement for actual lodging expenses that exceed the above amounts may be allowed with the advance approval of the Deputy Director of the *California* Department of Health Service or his or her designee. Receipts are required.

*Receipts from Internet lodging reservation services such as Priceline.com which require prepayment for that service, ARE NOT ACCEPTABLE LODGING RECEIPTS and are not reimbursable without a valid lodging receipt from a lodging establishment.

- (2) Meal/Supplemental Expenses (with or without receipts): With receipts, the contractor will be reimbursed actual amounts spent up to the maximum for each full 24-hour period of travel.

Meal / Expense	Reimbursement Rate
Breakfast	\$ 6.00
Lunch	\$ 10.00
Dinner	\$ 18.00
Incidental expenses	\$ 6.00

- d. Out-of-state travel may only be reimbursed if such travel is necessitated by the scope or statement of work and has been approved in advance by the program with which the contract is held. For out-of-state travel, contractors may be reimbursed actual lodging expenses, supported by a receipt, and may be reimbursed for meals and supplemental expenses for each 24-hour period computed at the rates listed in c. (2) above. For all out-of-state travel, contractors/subcontractors must have prior CDHS written or verbal approval. Verbal approval shall be confirmed in writing (email or memo).
- e. In computing allowances for continuous periods of travel of less than 24 hours, consult the chart appearing on Page 2 of this exhibit.
- f. No meal or lodging expenses will be reimbursed for any period of travel that occurs within normal working hours, unless expenses are incurred at least 50 miles from headquarters.

Travel Reimbursement Information

Exhibit G (Continued)

2. If any of the reimbursement rates stated herein is changed by DPA, no formal contract amendment will be required to incorporate the new rates. However, CDHS shall inform the contractor, in writing, of the revised travel reimbursement rates and the applicable effective date of any rate change.

At CDHS' discretion, changes or revisions made by CDHS to this exhibit, excluding travel reimbursement policies established by DPA may be applied retroactively to any agreement to which a Travel Reimbursement Information exhibit is attached, incorporated by reference, or applied by CDHS program policy. Changes to the travel reimbursement rates stated herein may not be applied earlier than the date a rate change was approved by DPA.

3. For transportation expenses, the contractor must retain receipts for parking; taxi, airline, bus, or rail tickets; car rental; or any other travel receipts pertaining to each trip for attachment to an invoice as substantiation for reimbursement. Reimbursement may be requested for commercial carrier fares; private car mileage; parking fees; bridge tolls; taxi, bus, or streetcar fares; and auto rental fees when substantiated by a receipt.
4. **Note on use of autos:** If a contractor uses his/her or a company car for transportation, the rate of reimbursement will be **48.5 cents** maximum per mile. If a contractor uses his/her or a company car "in lieu of" airfare, the air coach fare will be the maximum paid by the State. The contractor must provide a cost comparison upon request by the State. Gasoline and routine automobile repair expenses are not reimbursable.
5. The contractor is required to furnish details surrounding each period of travel. Travel expense reimbursement detail may include, but not be limited to: purpose of travel, departure and return times, destination points, miles driven, mode of transportation, etc. Reimbursement for travel expenses may be withheld pending receipt of adequate travel documentation.
6. Contractors are to consult with the program with which the contract is held to obtain specific invoicing procedures.

Per Diem Reimbursement Guide

Length of travel period	This condition exists...	Allowable Meal(s)
Less than 24 hours	Travel begins at 6:00 a.m. or earlier and continues until 9:00 a.m. or later.	Breakfast
Less than 24 hours	<ul style="list-style-type: none"> Travel period ends at least one hour after the regularly scheduled workday ends, or Travel period begins prior to or at 4:00 p.m. and continues beyond 7:00 p.m. 	Dinner
24 hours	Travel period is a full 24-hour period determined by the time that the travel period begins and ends.	Breakfast, lunch, and dinner
Last fractional part of more than 24 hours	Travel period is more than 24 hours and traveler returns at or after 8:00 a.m.	Breakfast
	Travel period is more than 24 hours and traveler returns at or after 2:00 p.m.	Lunch
	Travel period is more than 24 hours and traveler returns at or after 7:00 p.m.	Dinner

CONTRACTOR EQUIPMENT PURCHASED WITH CDHS FUNDS

Date Current Contract Expires: _____

CDHS Program Name: _____

CDHS Program Contract Manager: _____

CDHS Program Address: _____

CDHS Program Contract Manager's Telephone Number: _____

Date of this Report: _____

(THIS IS NOT A BUDGET FORM)

[illegible]

INSTRUCTIONS FOR HAS 1203 (Please read carefully.)

The information on this form will be used by the California Department of Health Services (CDHS) Asset Management (AM) to track contract equipment and miscellaneous property (see definitions A, and B) which is purchased with CDHS funds and is used to conduct state business under this contract. After the Standard Agreement has been approved and each time state/CDHS equipment and/or miscellaneous property has been received, the CDHS Program Contract Manager is responsible for obtaining the information from the Contractor and submitting this form to CDHS AM. The CDHS Program Contract Manager is responsible for ensuring the information is complete and accurate. (See *Health Administrative Manual (HAM)*, Section 2-1060 and Section 9-2310.)

Upon receipt of this form from the CDHS Program Contract Manager, AM will fill in the assigned state/CDHS property tag number, if applicable, for each item. AM will return the original form to the CDHS Program Contract Manager, along with the appropriate property tags. The CDHS Program Contract Manager will then forward the property tags and the original form to the Contractor and retain one copy until the termination of this contract. The Contractor should place property tags in plain sight and, to the extent possible, on the item's front left-hand corner. The manufacturer's brand name and model number are not to be covered by the property tags.

1. If the item was shipped via the CDHS warehouse and was issued a state/CDHS property tag by warehouse staff, fill in the assigned property tag. If the item was shipped directly to the Contractor, leave the first column blank.

2. Provide the quantity, description, purchase date, base unit cost, and serial number (if applicable) for each item of:

A. Major Equipment:

- Tangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more.
- Intangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more (e.g., software, video).

These items are issued green numbered state/CDHS property tags.

B. Miscellaneous Property: Specific tangible items with a life expectancy of one (1) year or more that have a base unit cost less than \$5,000. **These items are issued green unnumbered "BLANK" state/CDHS property tags** with the exception of the following, which are issued numbered tags: Personal Digital Assistant (PDA), PDA/cell phone combination (Blackberries), laptops, and desktop personal computers. NOTE: It is CDHS policy not to tag modular furniture. (See your Federal rules, if applicable.)

3. Provide the CDHS Purchase Order (STD 65) number if the items were purchased by CDHS. (See HAM, Section 2-1050.1.)
4. If a vehicle is being reported, provide the Vehicle Identification Number (VIN) and the vehicle license number to CDHS Vehicle Services. (See HAM, Section 2-10050.)
5. If all items being reported do not fit on one form, make copies and write the number of pages being sent in the upper right-hand corner (e.g., "Page 1 of 3.") The CDHS Program Contract Manager should retain one copy and send the original to: California Department of Health Services, Asset Management, MS 1405, P.O. Box 997413, 1501 Capitol Avenue, Suite 71.2101, Sacramento, CA 95899-7413.
6. Property tags that have been lost or destroyed must be replaced. Replacement property tags can be obtained by contacting AM at (916) 650-0124.
7. Use the version on the CDHS Intranet forms site. The HAS 1203 consists of one page for completion and one page with information and instructions.

INVENTORY/DISPOSITION OF CDHS-FUNDED EQUIPMENT

Date Current Contract Expires: _____

CDHS Program Name: _____

CDHS Program Contract Manager: _____

CDHS Program Address: _____

CDHS Program Contract Manager's Telephone Number: _____

Date of this Report: _____

Date of this Report: _____

(THIS IS NOT A BUDGET FORM)

[illegible]

INSTRUCTIONS FOR HAS 1204 (Please read carefully.)

The information on this form will be used by the California Department of Health Services (CDHS) Asset Management (AM) to: (a) conduct an inventory of CDHS equipment and property (see definitions A, and B) in the possession of the Contractor and/or Subcontractors, and (b) dispose of these same items. Report all items, regardless of the items' ages, per number 1 below, purchased with CDHS funds and used to conduct state business under this contract. (See *Health Administrative Manual (HAM)*, Section 2-1060 and Section 9-2310.)

The CDHS Program Contract Manager is responsible for obtaining information from the Contractor for this form. The CDHS Program Contract Manager is responsible for the accuracy and completeness of the information and for submitting it to AM.

Inventory: List all CDHS tagged equipment and miscellaneous property on this form and submit it within 30 days prior to the three-year anniversary of the contract's effective date, if applicable. **The inventory should be based on previously submitted HAS 1203s**, "Contractor Equipment Purchased with CDHS Funds." AM will contact the CDHS Program Contract Manager if there are any discrepancies. (See HAM, Section 2-1040.1.)

Disposal: (*Definition: Trade in, sell, junk, salvage, donate, or transfer; also, items lost, stolen, or destroyed (as by fire).*) The HAS 1204 should be completed, along with a "Property Survey Report" (STD. 152) or a "Property Transfer Report" (STD. 158), whenever items need to be disposed of; (a) during the term of this contract and (b) 30 calendar days before the termination of this contract. After receipt of this form, the AM will contact the CDHS Program Contract Manager to arrange for the appropriate disposal/transfer of the items. (See HAM, Section 2-1050.4.)

1. List the state/CDHS property tag, quantity, description, purchase date, base unit cost, and serial number (if applicable) for each item of;

A. Major Equipment: **(These items were issued green numbered state/CDHS property tags.)**

- Tangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more.
- Intangible item having a base unit cost of \$5,000 or more and a life expectancy of one (1) year or more (e.g., software, video.)

B. Miscellaneous Property:

Specific tangible items with a life expectancy of one (1) year or more that have a base unit cost less than \$5,000. The miscellaneous property items were issued green unnumbered "BLANK" state/CDHS property tags with the exception of the following, which are issued numbered tags: Personal Digital Assistant (PDA), PDA/cell phone combination (Blackberries), laptops, and desktop personal computers.

2. If a vehicle is being reported, provide the Vehicle Identification Number (VIN) and the vehicle license number to CDHS Vehicle Services. (See HAM, Section 2-10050.)

3. If all items being reported do not fit on one page, make copies and write the number of pages being sent in the upper right-hand corner (e.g. "Page 1 of 3.")

4. The CDHS Program Contract Manager should retain one copy and send the original to: California Department of Health Services, Asset Management, P.O. Box 997413, 1501 Capitol Avenue, Suite 71.2101, MS 1405, Sacramento, CA 95899-7413.

5. Use the version on the CDHS Intranet forms site. The HAS 1204 consists of one page for completion and one page with information and instructions.

For more information on completing this form, call AM at (916) 650-0124.